

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

TELICIA BLYTHE,

Plaintiff,

vs.

WALMART CORPORATION,

Defendant.

CIV. NO. 20-00415 JAO-RT

FINDINGS AND
RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT

**FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

Before the Court is Plaintiff Telicia Blythe's Motion for Default Judgment ("Motion" or "Motion for Default Judgment"), filed on August 10, 2021. ECF No. 27. The Court elects to decide this matter without a hearing pursuant to Rule 7.1(c) of the Local Rules of Practice of the United States District Court for the District of Hawaii. After careful review of the Motion, records in this case, and applicable law, the Court FINDS and RECOMMENDS that the district court DENY Plaintiff's Motion for Default Judgment.

Plaintiff alleges that a copy of the Summons and Complaint was served on Defendant Walmart Corporation ("Defendant") and that default judgment is being sought because the Defendant did not timely respond or defend. However, Plaintiff filed the Motion for Default Judgment on the same day shortly after

Plaintiff filed an Application for Entry of Default and Supporting Affidavit (ECF No. 26). As such, the Court Clerk has not entered default in this case before the Motion for Default Judgment was filed.

“The Ninth Circuit Court of Appeals has explained Rule 55 as requiring a ‘two-step process’ consisting of (1) seeking the clerk’s entry of default; and (2) filing a motion for entry of default judgment.” Ramsey v. Hawaii, No. CV 20-00215 JMS-KJM, 2020 WL 5754010, at *1 (D. Haw. Sept. 2, 2020), report and recommendation adopted as modified, No. CV 20-00215 JMS-KJM, 2020 WL 5753965 (D. Haw. Sept. 25, 2020) (citing Symantec Corp. v. Global Impact, Inc., 559 F.3d 922, 923 (9th Cir. 2009)). Plaintiff’s Motion for Default Judgment is thus premature as an entry of default must precede a motion for default judgment. See Haynes v. R.W. Selby Co. Inc., 457 Fed. Appx. 659, 660 (9th Cir. 2011) (citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986)) (Because Plaintiff failed to obtain an entry of default, default judgment should be denied.) Accordingly, the Court RECOMMENDS that the district court DENY Plaintiff’s Motion for Default Judgment.

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IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, September 2, 2021.



A handwritten signature in blue ink, appearing to read "Rom A. Trader".

Rom A. Trader
United States Magistrate Judge